

HOLSENBACK APC
J. Daniel Holsenback, Esq. (SBN 145640)
Peter Schluederberg, Esq., Of Counsel (SBN 137995)
4370 La Jolla Village Drive, Suite 970
San Diego, CA 92122
Telephone: (619) 269-4634
Facsimile: (619) 269-4635

Attorneys for Party-in-Interest
Optimum Health Institute

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHERYL CASON,

Plaintiff,

vs.

FEDERATED LIFE INSURANCE
COMPANY; a Minnesota Corporation
registered to do business in California; and
DOES 1 to 100,

Defendants.

Case No.: C 10-cv-00792 EMC

**STIPULATION AND ORDER
THEREON FOR BRIEFING
SCHEDULE AND EXPEDITED
SCHEDULING OF OSC/CIVIL
CONTEMPT HEARING REGARDING
OPTIMUM HEALTH INSTITUTE'S
REFUSAL TO PRODUCE
DOCUMENTS IN RESPONSE TO
COURT ORDER**

Third Party Optimum Health Institute ("OHI") and Defendant Federated Life Insurance Company ("Federated"), through their undersigned counsel, hereby stipulate and agree to the following, subject to approval by the Court:

WHEREAS, the Court issued an Order [Docket No. 73], dated April 26, 2011, directing OHI to lodge with the Court, under seal, for *in camera* review (in response to Federated's revised version of its prior March 1, 2011 subpoena), no later than May 11, 2011, documents responsive to the following requests:

1. Attendance records or documents reflecting dates of Cason's attendance or stay at OHI within the last 5 years;

2. Documents reflecting Cason's participation in scheduled classes at OHI during any of her stays within the last 5 years;
3. Any documents reflecting the class schedules for guests of Missionaries within the last 5 years;
4. Any documents describing the activities available on regular basis at OHI for guest or Missionaries within the last 5 years; and
5. Any documents Cason filled out at OHI within the last 5 years.

WHEREAS, OHI lodged documents with the Court pursuant to the Order, including documents over which it did not claim a privilege because such documents are publicly available, and documents which OHI did claim to be confidential and/or privileged, for which OHI provided a privilege log identifying which privileges or protections were being asserted;

WHEREAS, the Court thereafter issued an Order [Docket No. 83] on May 20, 2011, directing OHI to produce to Federated, within five Court days of the Order, each of the documents it had submitted for *in camera* review;

WHEREAS, OHI has produced to Federated, within the five Court days ordered by the Court, the documents it had produced for *in camera* review and over which it did not claim a privilege, as well as the privilege log identifying the documents it had produced for *in camera* review but which it claimed to be confidential and/or privileged, but OHI has withheld from its production to Federated the documents identified in the privilege log as confidential and/or privileged ("Subject Documents"), despite the Court's May 20, 2011 Order;

WHEREAS, both Federated and OHI seek to expedite the process by which the Court can hold an OSC hearing and contempt hearing in which it can find OHI in civil contempt for its refusal to comply with the Court's order to produce the Subject Documents to Federated which OHI claims to be confidential;

1 WHEREAS, both Federated and OHI seek to have the Court issue its civil contempt
2 order as early as possible so that OHI may file an expedited appeal and/or writ at the earliest
3 opportunity, while also requesting a stay of such contempt order pending the appeal;

4 1. OHI and Federated stipulate and agree that the Court may set an OSC and
5 contempt hearing on a shortened time, preferably during the June 6 to June 8, 2011 time
6 frame, to find OHI in civil contempt for its refusal to produce the Subject Documents and
7 counsel for OHI and Federated may appear telephonically at the hearing.

8 2. OHI and Federated may contemporaneously file briefs relating to the
9 OSC/civil contempt hearing by Thursday June 2, 2011, with no responsive briefs to be filed.

10 DATED: May 27, 2011

HOLSENBACK APC

11 /s/J. DANIEL HOLSENBACK

12 J. Daniel Holsenback, Esq.
13 Peter Q. Schluederberg, Esq. for
14 Interested Third Party,
OPTIMUM HEALTH INSTITUTE

15
16 **THE COSTA LAW FIRM**

17 /S/ DANIEL P. COSTA

18 Daniel P. Costa
19 Attorneys for Defendant
20 FEDERATED LIFE INSURANCE COMPANY

21 **ORDER ON STIPULATION**

22 GOOD CAUSE APPEARING, and pursuant to the above stipulation, IT IS HEREBY
23 ORDERED as follows:

24 1. The requested OSC/civil contempt hearing to determine whether Optimum
25 Health Institute should be found in civil contempt for its refusal to produce documents
26 pursuant to Court order is set for June 8, 2011 at 10:30 am. Counsel for OHI and
27 Federated may appear telephonically at the hearing. Court will call both parties between
28 10:30 a.m. and 12:00 p.m.

1 2. Both OHI and Federated may file briefs relating to the OSC/civil contempt
2 hearing by Thursday June 2, 2011, with no responsive briefs to be filed.

3
4 IT IS SO ORDERED.

5 Dated: May 27, 2011
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